**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34–41644, International Series Release No. 1200, File No. S7–18–99]**

**RIN 3235–AH76**

## Exemption of the Securities of the Republic of Portugal Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes for comment an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate debt obligations issued by the Republic of Portugal as ''exempted securities'' for the purpose of the marketing and trading of futures contracts on those securities in the United States. The proposed amendment is intended to permit futures trading on the sovereign debt of Portugal.

**DATES:** Comments should be submitted on or before August 30, 1999.

**ADDRESSES:** All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. S7–18–99; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Rosen, Attorney, Office of Market Supervision (OMS), Division of Market Regulation (Division), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, at (202) 942–0096.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Under the Commodity Exchange Act (CEA),[1] it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (Securities Act)[2] or the Securities Exchange Act of 1934 (Exchange Act).[3] Debt obligations of foreign governments are not exempted securities under either of these statutes.

The Securities and Exchange Commission (SEC or Commission), however, has adopted Rule 3a12–8[4] (Rule) under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of the marketing and trading futures contracts on those securities in the United States. The foreign governments currently designated in the Rule are the United Kingdom of Great Britain and Northern Ireland, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela, Belgium, and, most recently, Sweden (the Designated Foreign Governments). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission is soliciting comments on a proposal to amend Rule 3a12–8 to add the debt obligations of the Republic of Portugal (Portugal) to the list of Designated Foreign Governments whose debt obligations are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on the debt obligations of Portugal would have to meet the existing requirements of the Rule.

### II. Background

Adopted in 1984 pursuant to the exemptive authority contained in Section 3(a)(12) of the Exchange Act,[5] Rule 3a12–8 provides a limited exception from the CEA's prohibition on futures overlying individual securities.[6] As originally adopted, the Rule provided that the debt obligations of the United Kingdom of Great Britain and Northern Ireland and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[7]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.[8]

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela, Belgium, and, most recently, Sweden.[9]

[1] 7 U.S.C. 1 *et seq.*

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.3a12–8.

[5] *See* Securities Exchange Act Release No. 20708 (Original Adopting Release) (March 2, 1984) 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19811 (Original Proposing Release) (May 25, 1983) 48 FR 24725 (June 2, 1983).

[6] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (CFTC) had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 5, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[7] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987) 52 FR 8875 (March 20, 1987).

[8] The CFTC regulates the marketing and trading of foreign futures contracts. CFTC rules provide that any person who offers or sells a foreign futures contract to a U.S. customer must be registered under the CEA, unless otherwise specifically exempted.

[9] In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986) 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987) 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988) 53 FR 43860 (October 31, 1988). In 1992, the Rule

## III. Discussion

The Bolsa de Derivados do Porto (BDP) has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of Portugal. The BDP has stated that futures contracts on Portuguese ''OT 10'' Fixed Rate Bonds have traded on the BDP since 1996, and that its Petition for Rulemaking to amend Rule 3a12–8 is made principally to permit the lawful marketing of those contracts to U.S. investors.[10] The BDP further represents that the Instituto de Gestão do Crédito Público (IGCP)—a body established by the Portuguese government that possesses the authority to issue and manage all of Portugal's direct public debt—supports the BDP's request for the amendment of Rule 3a12–8.[11]

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, the futures contracts require delivery outside the United States, and the contracts be traded on a board of trade) would continue to apply. The BDP has represented that the securities underlying the futures contracts it intends to list are not registered in the United States,[12] that delivery will occur through book entry registration in the Central de Valores Mobiliarios (the Portuguese Central Depositary System), and that the BDP is a ''board of trade'' as defined by the CEA.[13]

When amending the Rule to include Belgium, the Commission stated that it would consider two types of evidence about whether there was an active and liquid secondary trading market for the security—credit rating (as indirect evidence) and trading data.[14] Earlier, when amending the Rule to include Mexico, Brazil, Argentina, and Venezuela, the Commission considered primarily whether market evidence indicated that an active and liquid secondary trading market exists for the sovereign debt of those countries.[15] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [16] by at least two nationally recognized statistical rating organizations (NRSROs).[17]

Portugal's long-term local and foreign currency ratings meet the credit rating standard. Moody's has assigned Portugal a long-term local currency credit rating of Aa2 and a long-term foreign currency credit rating of Aa2. S&P has assigned Portugal a long-term local currency credit rating of AA and a long-term foreign currency credit rating of AA.

The Commission also observes that market data indicates that there exists an active and liquid trading market for Portuguese issued debt instruments. At the end of 1998, the total Portuguese direct public debt outstanding was equivalent to approximately US$66.35 billion (11.70 trillion Portuguese escudo (PTE)).[18] As of January 31, 1999, the largest portion of this debt, Fixed Rate Bonds (OT) denominated in Portuguese escudo or euro, amounted to approximately US$29.26 billion.[19] Floating Rate Notes (FIP and OTRV) amounted to approximately US$7.38 billion.[20] Treasury Bills (BT) amounted to approximately US$2.12 billion.[21] Other non-escudo and non-euro foreign currency-denominated debt amounted to in excess of approximately US$14.1 million.[22]

The BDP has submitted data indicating that secondary market trading in OT Fixed Rate Bonds amounted to approximately US$71.7 billion (PTE 12.637 trillion) in 1997, approximately US$125 billion (PTE 22.005 trillion) in 1998, and approximately US$15.9 billion (PTE 2.809 trillion) in the first month of 1999.[23] The average daily trading volume was US$290 million (PTE 51.195 billion) in 1997, US$505 million (PTE 88.959 billion) in 1998, and US$797 million (PTE 140.450 billion) for the first month of 1999.[24] The BDP adds that there were 44,873

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was again amended to (1) include debt securities offered by the Republic of Ireland and Italy; (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany;'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 8, 1992) 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994) 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995). In 1996, the Rule was amended to include debt securities issued by the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996). In 1999, the Rule was amended to include debt securities issued by the Kingdom of Belgium and the Kingdom of Sweden. *See* Securities Exchange Act Release No. 41116 (February 26, 1999) 64 FR 10564 (March 5, 1999); Securities Exchange Act Release No. 41453 (May 26, 1999) 64 FR 29550 (June 2, 1999).

[10] *See* Letter from Mark D. Wiseman, counsel for BDP, to Jonathan G. Katz, Secretary, Commission, dated June 1, 1999 (BDP Petition).

[11] *See* BDP Petition, *supra* note 10.

[12] A number of Portuguese government debt securities have been registered under the Securities Act. *See* BDP Petition, *supra* note 10. The Rule does not exempt futures contracts on those securities.

[13] *See* BDP Petition, *supra* note 10.

[14] *See* Securities Exchange Act Release No. 41116 (February 26, 1999) 64 FR 10564 (March 5, 1999).

[15] *See, e.g.,* Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[16] The two highest categories used by Moody's Investor Services (Moody's) for long-term debt are ''Aaa'' and ''Aa.'' The two highest categories used by Standard and Poor's (S&P) for long-term debt are ''AAA'' and ''AA.''

[17] *See, e.g.,* Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA– by S&P, and Italy's long-term sovereign debt was rated Aaa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994) 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P); *see also* Securities Exchange Act Release No. 36213 (September 11, 1995) 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by the Rule); Securities Exchange Act Release No. 24428 (May 5, 1987) 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the Rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[18] *See* BDP Petition, *supra* note 10. All U.S. dollar equivalents set forth in this release are based on a conversion rate of PTE 176.31 for US$1.00 in effect as of January 29, 1999. The BDP calculated this rate used for its representations by taking the January 29, 1999 noon buying rate in The City of New York for cable transfers in euro as certified for customs purposes by the Federal Reserve Bank of New York ($1.1371=1 euro) multiplied by the European Monetary Union's official determination of the number of Portuguese escudo per euro (1 euro=PTE 200.482). *See id.*

[19] *See* BDP Petition, *supra* note 10.

[20] *See* BDP Petition, *supra* note 10.

[21] *See* BDP Petition, *supra* note 10. Other escudo-denominated and euro-denominated tradable Portuguese domestic debt securities amounted to US$35.6 million.

[22] *See* BDP Petition, *supra* note 10.

[23] *See* BDP Petition, *supra* note 10. The BDP states that the statistics about secondary market trading in Portuguese debt were derived from information supplied by Sistema de Informacão de Bolsa do Porto (SIBOP). SIBOP is an electronic market information system managed by the BDP and is used by market members and institutional investors. The SIBOP system provides market participants with securities and futures real time data, historical information for securities and derivatives, daily and monthly trading volume information, market news, and file transfer capabilities. *Id.*

[24] *See* BDP Petition, *supra* note 10. The BDP represents that the activity and liquidity of the OT Fixed Rate Bond secondary market has increased substantially during the past two years. The BDP believes that the increase in average daily and monthly trading volumes for OT Fixed Rate Bonds reflects both Portugal's decision to issue a greater number of OT fixed Rate Bonds in lieu of other classes of securities and increased market interest in Portugal's securities. *See id.*

transactions in OT Fixed Rate Bonds in 1997, 45,676 transactions in 1998, and 3,835 transactions in the first month of 1999.[25]

The BDP also submitted data stating that secondary market trading in FIP Floating Notes amounted to approximately US$3.6 billion (PTE 640 billion) in 1997, approximately US$0.01 billion (PTE 2.4 billion) in 1998, and approximately US$0.00007 billion (PTE 0.01 billion) in the first month of 1999.[26] The average daily trading volume was US$14.2 million (PTE 2.501 billion) in 1997, US$0.05 million (PTE 9.3 million in 1998), and US$0.003 million (PTE 0.6 million) for the first month of 1999.[27] The BDP adds that there were 2,414 transactions in FIP Floating Notes in 1997, 1,777 transactions in 1998, and 74 transactions in the first month of 1999.[28]

The BDP further submitted data stating that secondary market trading in ORTV Floating Notes amounted to approximately US$4.7 billion (PTE 827 billion) in 1997, approximately US$4.2 billion (PTE 739 billion) in 1998, and approximately US$0.4 billion (PTE 72.7 billion) in the first month of 1999.[29] The average daily trading volume was US$19.6 million (PTE 3.477 billion) in 1997, US$17.3 million (PTE 3.047 billion in 1998), and US$20.6 million (PTE 3.633 billion) for the first month of 1999.[30] The BDP adds that there were 2,679 transactions in FIP Floating Notes in 1997, 2,284 transactions in 1998, and 127 transactions in the first month of 1999.[31]

In light of the above data, the Commission preliminarily believes that the debt obligations of Portugal should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments.

## IV. General Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of Portugal as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of Portugal's sovereign debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between Portugal and the Designated Foreign Governments for purposes of the Rule. The Commission also requests information regarding the potential impact of the proposed rule on the U.S. economy on an annual basis. If possible, commenters should provide empirical data to support their views. The Commission also seeks comments on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

## V. Costs and Benefits of the Proposed Amendments

The Commission has considered the costs and benefits of the proposed amendment to the Rule and preliminarily believes that the proposed amendment offers potential benefits for U.S. investors, with no direct costs. If adopted, the proposed amendment would allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. Consistent with Congressional support for futures on foreign sovereign debt securities, the trading of futures on the sovereign debt of Portugal should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Portugal. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others because the proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

The Commission requests comments on the costs and benefits of the proposed amendment to Rule 3a12–8. In particular, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others.

## VI. Effect of the Proposed Amendment on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act[32] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effect of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Moreover, Section 3 of the Exchange Act,[33] as amended by the National Securities Markets Improvement Act of 1996,[34] provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

In light of the standards cited in Sections 3 and 23(a)(2) of the Exchange Act, the Commission preliminarily believes that the proposed amendment to the Rule will promote efficiency, competition and capital formation. The proposal is intended to expand the range of financial products available in the United States, and will make available to U.S. investors an additional product to use to hedge the risks associated with the trading of the underlying sovereign debt of Portugal. Insofar as the proposed amendment contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Portugal is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission requests comments as to whether the amendment to the Rule will have any anti-competitive effects.

## VII. Administrative Requirements

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commentators are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

The Paperwork Reduction Act does not apply because the proposed amendment does not impose recordkeeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

[25] *See* BDP Petition, *supra* note 10.
[26] *See* BDP Petition, *supra* note 10.
[27] *See* BDP Petition, *supra* note 10.
[28] *See* BDP Petition, *supra* note 10.
[29] *See* BDP Petition, *supra* note 10.
[30] *See* BDP Petition, *supra* note 10.
[31] *See* BDP Petition, *supra* note 10.

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 78c.
[34] Pub. L. 104–290, 110 Stat. 3416 (1996).

## VIII. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

## List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

## Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

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2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xx), removing the period at the end of paragraph (a)(1)(xxi) and adding ''; or'' in its place, and adding paragraph (a)(1)(xxii), to read as follows:

**§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.**

(a) * * *

(1) * * *

(xxii) The Republic of Portugal.

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Dated: July 23, 1999.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** Appendix A to the Preamble will not appear in the Code of Federal Regulations.

## Appendix A

*Regulatory Flexibility Act Certification*

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 (Rule) under the Securities Exchange Act of 1934 (Exchange Act), which would define the government debt securities of the Republic of Portugal (Portugal) as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of Portugal. Second, because futures contracts on the twenty-one countries whose debt obligations are designated as ''exempted securities'' under the Rule, which already can be traded and marketed in the United States, still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because those primarily interested in trading such futures contracts are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10.

Dated: July 21, 1999.

Arthur Levitt, Jr.,

*Chairman.*

[FR Doc. 99–19415 Filed 7–28–99; 8:45 am]

BILLING CODE 8010–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

**[WT Docket No. 99–87, RM–9332, RM–9405; DA 99–1431]**

## Comments Requested on Licensing of PMRS Channels in the 800 MHz Band for Use In Commercial SMR Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; request for additional comments.

**SUMMARY:** This document supplements the *Notice of Proposed Rule Making* (''*NPRM*'') published in the **Federal Register** of May 3, 1999, regarding Revised Competitive Bidding Authority. This document requests comment on whether the Commission should amend its licensing rules for the 800 MHz band to allow the incorporation of Private Mobile Radio Service channels into a Commercial Mobile Radio Service system.

**DATES:** Comments must be filed on or before August 2, 1999 and reply comments must be filed on or before September 16, 1999.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Ramona Melson, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of a *Public Notice* (DA 99–1431) released on July 21, 1999. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554, and may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The *Public Notice* is also available on the Internet at the Commission's web site: http://www.fcc.gov/wtb/documents.html.

## Synopsis of Document

1. On July 21, 1999, the Wireless Telecommunications Bureau (''Bureau'') issued an *Order* (DA 99–1404) conditionally granting in part and denying in part 50 Requests for Waiver submitted by Nextel Communications, Inc. (''Nextel'') in conjunction with applications seeking the Commission's consent to assignment of Part 90 Private Mobile Radio Service (''PMRS'') Business channels from various entities to Nextel (''*Nextel Order*''). In its waiver requests, Nextel indicated that it desired to utilize these PMRS frequencies for Commercial Mobile Radio Service (''CMRS'') operation in its 800 MHz Specialized Mobile Radio (''SMR'') systems. Nextel sought waiver of Sections 90.617 and/or 90.619 of the Commission's rules, 47 CFR 90.617 and 90.619, because these rules do not permit the authorization of SMR systems on Business Radio Category and Industrial/Land Transportation Category channels.

2. In the *Nextel Order,* the Bureau conditionally granted Nextel's waiver requests to the extent that Nextel will use the PMRS frequencies predominantly to relocate incumbent licensees on the upper 200 channels of the 800 MHz band. However, the Bureau denied Nextel's waiver requests to the extent that Nextel sought a waiver for the purpose of incorporating PMRS Business channels in its CMRS system.

3. In the *Nextel Order,* the Bureau concluded that the practical effect of granting Nextel's waiver requests would have been to establish a policy of general applicability for all Private Land Mobile Radio (''PLMR'') channels. Thus, the Bureau determined that the issue of incorporating PMRS channels into CMRS systems was better addressed in a rulemaking proceeding than in a rule waiver proceeding. The Bureau noted